

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MAJED KHALIL,

Plaintiff,

v.

FOX CORPORATION, FOX NEWS
NETWORK LLC, LOU DOBBS, and
SIDNEY POWELL

Defendants.

Case No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Fox Corporation and Fox News Network, LLC each remove this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. The grounds for removal are:

1. Plaintiff Majed Khalil commenced this action on December 1, 2021, by filing a civil complaint in the Supreme Court of the State of New York, County of New York,¹ alleging four counts of defamation per se. A copy of the complaint is attached hereto as Exhibit 1.

2. As of the time of this filing, Fox Corporation has not been served with the complaint, but obtained a copy through other channels. And, as of the time of this filing, Fox News Network, LLC has not been served with the complaint, but obtained a copy through other channels.

¹ As of the time of this filing, an index number has not been assigned in the New York State Supreme Court.

3. This Court has jurisdiction over this case, as it is between a foreign citizen or subject and citizens of one or more States, and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332.

4. According to the complaint, Plaintiff Khalil “is a Venezuelan businessman” and “a foreigner with a Venezuelan nationality.” Compl. ¶¶ 8, 2. On information and belief, Khalil was a citizen of Venezuela at the time he filed his complaint and remains so at this time.

5. Defendant Fox Corporation is incorporated in Delaware, has its principal place of business in New York, was a citizen of Delaware and New York at the time the complaint was filed, and remains so. 28 U.S.C. § 1332(c)(1); *see also* Comp. ¶ 9 (alleging same).

6. Defendant Fox News Network, LLC is a Delaware limited liability company and thus “takes the citizenship of its members.” *Avant Capital Partners, LLC v. W108 Dev. LLC*, 387 F. Supp. 3d 320, 322 (S.D.N.Y. 2016) (citations omitted). Fox News Network, LLC’s sole member is Fox Television Stations, LLC, whose sole member is Fox Television Holdings, LLC, whose sole member is Foxcorp Holdings, LLC, a; of which was also true at the time the complaint was filed. All of these companies were, and remain, formed in Delaware. The sole member of Foxcorp Holdings, LLC is Fox Corporation, which was a citizen of Delaware and New York at the time the complaint was filed, and remains so. *See supra* ¶ 4.

7. Upon information and belief, Defendant Lou Dobbs was a citizen of the state of New Jersey at the time the complaint was filed, and remains so. Summons at p. 2.

8. Upon information and belief, Defendant Sidney Powell was a citizen of the state of Texas at the time the complaint was filed, and remains so. Summons at p. 2.

9. As to the amount in controversy, the complaint demands “punitive damages in an amount not less than \$ 250 million to be determined at trial.” Compl. p. 79-80. To the extent the

complaint does not specify compensatory damages, it appears to a reasonable probability that the amount in controversy exceeds \$75,000 based on the punitive damages demand and the fact that the complaint alleges that “Fox News Media reaches 200 million people each month,” and “[i]n 2020, Fox News Channel averaged over 3.5 million viewers during its primetime evening news programming and nearly 2 million daytime viewers.” Compl. ¶ 10.

10. Removal of this action is proper under 28 U.S.C. § 1441. Although that statute bars removal of a case based on diversity of citizenship if a defendant “is a citizen of the State in which such action is brought,” that bar applies only when such a forum-state defendant has been “properly joined *and served*.” See 28 U.S.C. § 1441(b)(2) (emphasis added). The Second Circuit has squarely held that this so-called “forum defendant rule” does not prevent removal of a state-court action on diversity grounds before a forum-state defendant has been served. *Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 704–07 (2d Cir. 2019) (recognizing that the forum defendant rule does not prevent removal by the home-state defendant before service is effected); see also *Encompass Ins. Co. v. Stone Mansion Restaurant, Inc.*, 902 F.3d 147, 152 (3d Cir. 2018) (same). Fox Corporation has not yet been properly served. Fox News Network, LLC has not yet been properly served.

11. Removal also is timely and proper under 28 U.S.C. § 1446. Specifically, § 1446(b)(1) requires a defendant to remove within 30 days of receiving service.

12. Section 1446(a) requires the attachment of all process, pleadings, and orders served upon the removing defendant in the State action. Because neither Fox Corporation nor Fox News Network, LLC have been served, no attachments are required under Section 1446(a). Nevertheless, the State court complaint is attached as Exhibit 1.

13. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be served on the Plaintiff, and a copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York.

14. With this removal, neither Fox Corporation nor Fox News Network, LLC waive any defense, including but not limited to insufficient service of process. *See Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 157 n.4 (2d Cir. 1996) (“Removal does not waive any Rule 12(b) defenses.”).

THEREFORE, Fox Corporation and Fox News Network, LLC have each removed this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

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*Counsel for Fox Corporation
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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2021, I served a true and correct copy of the foregoing via the Court's CM/ECF. I further certify that on December 2, 2021, I sent the foregoing document by first-class mail and e-mail to:

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